

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 20-55

Date Received: 7/22/20

Title: Integration of Real Property Guidance to Procurement Guidance

Initiator Name: Monica Rheindhart

Initiator Organization Name / Routing Code: Procurement Policy Branch, AAP-110

Initiator Phone: (202) 267-1441

ASAG Member Name: Stephen Mangan

ASAG Member Phone: (405) 954-4137

Policy and Guidance: (check all that apply)

- ☐ Policy
- ☒ Procurement Guidance
- ☐ Real Estate Guidance
- ☐ Other Guidance
- ☐ Non-AMS Changes

Summary of Change:

Integration of Real Property Guidance into Procurement Guidance Sections T3.1.3, T3.1.4, T3.1.5 and T3.1.7

Reason for Change:

The purpose of this change is to integrate Real Property Guidance into Procurement Guidance T3.1.3, T3.1.4, T3.1.5 and T3.1.7 per directive.

Development, Review, and Concurrence:

AAQ, AAP and AGC

Target Audience:

All contracting personnel (Real property and Procurement)

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

Procurement Guidance Sections T3.1.3, T3.1.4, T3.1.5 and T3.1.7

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links:

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.1.3.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.1.4.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.1.5.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.1.7.pdf>

Attachments:

Redlines and final documents.

Other Files:

N/A.

Redline(s):

Section Revised:

3.1.3 A 1 – Standards of Conduct for FAA Employees

Procurement Guidance - (~~4/2020~~ 9/2020)

T3.1.3 Fundamental Principles

A Fundamental Principles

1 Standards of Conduct for FAA Employees Revised ~~10/2005~~ 9/2020

B Clauses

C Forms

T3.1.3 Fundamental Principles

A Fundamental Principles

1 Standards of Conduct for FAA Employees Revised 10/2005 9/2020

- a. Transactions relating to the expenditure of funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in FAA-contractor relationships.
- b. The Contracting Officer (CO), other procurement integrated product team members from the service organization, and ~~or~~ anyone directly involved in conducting a procurement are to comply with 5 CFR § 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and 18 U.S.C. §§ 201-209, 216.
- c. Letters of commendation to contractors or their employees must be reviewed by the Office of the Chief Counsel.
- d. FAA personnel should consult their cognizant legal counsel about any questions or issues pertaining to standards of conduct.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

Sections Revised:

3.1.4 A 1 – Delegated Authority

3.1.4 A 2 – COCO Responsibilities

3.1.4 A 3 – 1102/1170 Series Certification

3.1.4 A 4 – Contracting Officer Certificates of Appointment/Warrants (1102/1170

Series

3.1.4 A 6 – Ratification of Unauthorized Commitments

Section Added:

3.1.4 D 2 – 1170 Series Warrant Standards

Procurement Guidance - (~~4/2020~~ 9/2020)

T3.1.4 Delegations Revised 7/2009

A Authority, Delegation, and Unauthorized Commitments Revised 1/2017

1 Delegated Authority Revised ~~1/2017~~ 9/2020

2 COCO Responsibilities Revised ~~1/2017~~ 9/2020

3 1102/1170 Series Certification Revised ~~1/2017~~ 9/2020

4 Contracting Officer Certificates of Appointment/Warrants (1102/1170 Series) Revised ~~7/2018~~ 9/2020

5 Procurement Authority Delegated to Other Qualified Individuals Revised 1/2017

6 Ratification of Unauthorized Commitments Revised ~~10/2017~~ 9/2020

B Clauses Revised 7/2010

C Forms Revised 7/2010

D Appendix ~~Added 1/2011~~ Revised 9/2020

1 1102 Series Warrant Standards Revised 1/2017

2 1170 Series Warrant Standards Added 9/2020

T3.1.4 Delegations Revised 7/2009

A Authority, Delegation, and Unauthorized Commitments Revised 1/2017

1 Delegated Authority Revised ~~1/2017~~ 9/2020

a. *Delegation.* The Administrator has authority to enter into contracts, leases, grants, cooperative agreements, and other transactions. Except for Airport Improvement Grants (AIP), the Administrator has delegated authority for managing these functions to the FAA Acquisition Executive (FAE). Based on the Administrator's delegation, the FAE has authority to appoint, and redelegate authority to, the Chief(s) of the Contracting Office (COCO), Contracting Officers (CO) and qualified non-contracting personnel. Except for the Purchase Card program, these delegations cannot be redelegated.

b. *Administrator's Review.* The Administrator must be notified of and given sufficient time to review any non-~~Airport Improvement Program (AIP)~~ AIP grant, cooperative agreement, or other transaction not defined in AMS with a cumulative value of \$10 million or more, ~~or and those~~ with significant Congressional interest. (See AMS Procurement Guidance T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests, for additional information).

c. *Authority Granted.* Any delegation of authority must be in writing and state the authority and limitations it conveys. If authority is not included in the delegation, then that authority does not exist.

d. *Basis for Delegation.* Before delegating authority, the FAE considers the following:

- (1) ~~There must~~ That there is ~~be~~ a demonstrated need for the authority;
- (2) ~~The~~ That the delegation level ~~must will~~ be commensurate with the need in terms of dollar value, complexity, and mission criticality;
- (3) ~~The~~ That the individual ~~must~~ meets the qualifications and certification standards for the authority. However, an individual's qualifications, without a demonstrated need for the authority, are not sufficient reason to grant authority; and
- (4) Other factors, such as organizational structure, total volume of the actions, complexity and dollar value of the work involved, and aggregate value of the anticipated actions that the individual will be processing.

e. *Purchase Card Delegation.* The FAE's approval is not required for individual Delegations of Procurement Authority (DPA) for the purchase card program. Procurement Guidance T3.2.6 Purchase Card Program addresses purchase card delegations.

f. *Delegation Records.* The FAE will provide a copy of all delegations of authority and any modifications, terminations/rescissions, or waivers to delegations to the COCO and the Acquisition Career Manager (ACM). The ACM will be the official record keeper for all delegations and must maintain copies of the delegations.

g. *Rescinding Delegation.* Except for the purchase card program and delegated authorities which are automatically rescinded due to the individual leaving the Acquisition and Contracting organization or receiving a new warrant, only the FAE may rescind a CO warrant or other procurement authority. Unless the delegation provided for automatic rescission, the rescission is to be by letter, ~~and~~ state the general reason for rescission and the effective date. When a delegated authority is rescinded before its automatic rescission date or when there is no automatic rescission date, the written notice to the individual should be provided enough time in advance of the rescission to ensure the individual does not make any unauthorized commitments.

Upon notification of the rescission, the original warrant or certificate of appointment is annotated as "rescinded". Reasons for rescission may include:

- (1) The need for the delegated authority no longer exists, for example, lack of a demonstrated need, retirement, resignation, termination of employment, issuance of a new warrant, or an assignment to another position.
- (2) Failure to comply with applicable requirements, limitations, policies, regulations, statutes, or delegated responsibilities;
- (3) Maintenance training/certification requirements have not been met, or failure to maintain all standards after appointment; or
- (4) Violation of a material portion of the ethics guidance for Federal employees and/or standards of conduct for Department of Transportation employees.

h. *Changes in Authority.* When the FAE modifies delegated authority, it must be in writing and delivered to the individual with sufficient advance notice and instructions to ensure that the individual does not make unauthorized commitments. Any increase or decrease in the dollar value or scope of an individual's authority requires issuing a new certificate of appointment or warrant and rescission of the previous delegated authority.

i. *Waivers.* The FAE may waive qualification and certification standards if circumstances clearly dictate need for delegation of authority, even though the employee does not fully meet required standards. Such a waiver is conditional, identifies duration, and must state the requirements that the individual must satisfy to become fully qualified.

2 COCO Responsibilities Revised 1/2017 9/2020

a. The COCO is a position designated by the FAE that is delegated unlimited authority for procurement contract award and administration, leases, real estate transactions, cooperative agreements, non-Airport Improvement (AIP) grants, other agreements, and other transactions. The COCO, acting within the scope of the FAE's delegation, manages day-to-day contracting functions for FAA.

b. Specific responsibilities of the COCO include:

(1) *Review/Approve Qualifications.* The COCO reviews and approves qualifications of personnel such as education, training, knowledge, and experience, being considered for appointment as a CO or for other types of procurement authority.

(2) *Delegate Authority.* Except for delegations made pursuant to the purchase card program, the COCO formally requests delegation of authority in writing to the FAE.

(3) *Periodic Review.* The COCO, with the appropriate managers, periodically reviews delegations to validate that the delegations remain appropriate and needed, reviews individual's continuous learning to ensure requirements are being met, and periodically examines procurement actions to ensure authorized individuals do not exceed their delegated authority. All Level I and II warrants will be reviewed at least annually and Level III warrants will be reviewed at least every two (2) years.

3 1102/1170 Series Certification Revised ~~1/2017~~ 9/2020

Individuals must meet training, education, and experience requirements to qualify for an 1102/1170 job series position. AMS Policy Section 5, Acquisition Career Program, outlines certification requirements for personnel once in the 1102/1170 series.

4 Contracting Officer Certificates of Appointment/Warrants (1102/1170 Series) Revised ~~7/2018~~ 9/2020

a. *Limitations.* Warrants define the dollar and scope limitations of the authority. Warrants may be limited or unlimited. A limited warrant states a total dollar limitation for each transaction. The dollar value of a transaction includes the base year and all options and ceiling amounts, as defined by "total estimated potential value" in Appendix C of AMS policy. An unlimited warrant allows transactions at any dollar value. In addition to the dollar value, limited and unlimited warrants must expressly state any limitations of authority (other than limitations in applicable laws or regulations) and the specific types of transactions the CO is authorized to make.

b. *Warrant Levels.* The determination of warrant levels must be based on a demonstrated mission need for the authority. These warrant levels do not apply to purchase card delegations. Individuals must meet the training, education, and experience requirements for certification as outlined in AMS Policy Section 5, Acquisition Career Program, to qualify for a warrant unless the FAE grants a waiver in accordance with Section 1.i.

c. *Procedures for Obtaining Certificate of Appointment (Warrant).*

~~(1) For the 1102 Series,~~ The request for a certificate of appointment/warrant is prepared through the CO. Warrant Request Forms are located at the ACM Professions Portal at <https://ksn2.faa.gov/aa/AcquisitionProfessions/Pages/Default.aspx> (FAA only).

~~(2) For the 1170 Series,~~ the request for a certificate of appointment/warrant is prepared through the real estate CO. Warrant Request Forms are located at the ACM Professions

Portal at https://ksn2.faa.gov/faq/AcquisitionProfessions/Pages/reco_home.aspx (FAA only).

The manager ensures that there is a mission need; the individual meets the applicable training, education, certification and experience requirements commensurate with the proposed delegated threshold prior to forwarding the warrant request to the COCO and Acquisition Career Manager (ACM). A sample of the warrant request and instructions are available at the above link.

(32) The ACM and COCO review the request and supporting documentation for completeness and evaluates the applicant's acquisition experience, training, and evidence of certification.

(43) The certificate of appointment must include a warrant number, dollar limit of warrant authority, and any other applicable limitations, such as restrictions to certain types of transactions. If approved, the FAE signs the delegation and returns it to the ACM for distribution.

d. *Displaying Warrant and Other Certificate of Appointment.* COs must prominently display the original warrant or other certificate of appointment so that information about their authority and any limitations is readily available to the public and FAA personnel.

e. *Skills Currency/Continuous Learning.* To maintain the delegated authority, individuals must maintain appropriate 1102/1170 series certification level. Acquisition professionals must earn 80 eContinuous Learning Ppoints (CLP) of skills currency training every two (2) years. COCOs monitor continuous learning requirements for individuals' delegated authority. If an individual does not earn 80 CLPs every two (2) years, the FAE may rescind or modify the warrant or certificate of appointment to decrease the dollar and/or specific type of transaction authority.

5 Procurement Authority Delegated to Other Qualified Individuals Revised 1/2017

a. *General.* The FAE may delegate a limited form of procurement authority to qualified individuals who are not warranted COs. This limited authority may be granted to individuals within or outside of the contracting office when supported by a demonstrated need. The FAE evaluates the request and delegates authority to the individual needing the authority. The delegation must be in writing and state specific limitations governing the limited authority, such as dollar thresholds or types of procurement (i.e. supplies, services, construction, etc.). Guidance in this section does not apply to delegations under the purchase card program, which is addressed in AMS Procurement Guidance T3.2.6, Purchase Card Program.

b. *Redelegation.* Individuals delegated procurement authority from the FAE under this subsection cannot redelegate that authority.

c. *Delegation of Procurement Authority (DPA).* A DPA may be granted to non-1102s by the FAE through a written request. This form of delegation authorizes the individual to legally bind FAA and delegates specific authority related to the dollar threshold and types of procurements (not related to the purchase card program). This procurement authority cannot be further delegated, and personnel cannot "sign for" or over someone else holding procurement authority.

d. *Delegation of Reimbursable Agreement Authority (DRAA)*. For Small Scale Reimbursable Agreements (SSRAs) with a value of less than \$30,000, a DRAA may be granted to qualified non-1102s by the FAE through a written request. This delegation does not allow the individual to obligate funds nor is certification required. This authority cannot be further delegated, and personnel cannot “sign for” or “sign over” another's authority.

e. *Limitations*. All DPAs define the dollar and scope limitations of the authority granted by the FAE. All limitations based on dollar thresholds must ensure the dollar value of a transaction includes the base year and all options, as defined by "total estimated potential value" in Appendix C of AMS policy. In addition to the dollar value, a DPA must expressly state any limitations of authority (other than limitations in applicable laws or regulations) and state the specific types of transactions the non-1102 is authorized to make (e.g. other transaction agreements, reimbursable agreements, construction, services and/or supplies, etc.).

f. *Displaying the DPA and DRAA*. Personnel must prominently display any delegation to make information on the authority and any limitations readily available to the public and FAA personnel.

g. A sample of a delegation request and instructions is at the Acquisition Career Manager website.

6 Ratification of Unauthorized Commitments Revised 10/2017 9/2020

a. General.

(1) *Contracting Authority*. Only a CO and other qualified individual delegated procurement authority, acting within the scope of his or her delegated authority, may enter into contracts, ~~leases~~, or other agreements and may obligate funds on behalf of the Government.

(2) *Unauthorized Commitments*. A contract, ~~lease~~, order, or agreement made by an FAA employee, other than a CO ~~and or~~ other authorized person, is not binding because the person who made the agreement lacked the authority to commit the Government. An employee without proper authority who commits the Government is acting improperly. The employee will be held accountable and may be disciplined according to Federal Aviation Personnel Manual (FAPM) Letter 2635 and Human Resources Policy Manual (HRPM) ER-4.1, as applicable.

(3) *Organizational Responsibility*. FAA organizations must make every effort to prevent unauthorized commitments. Unauthorized commitments are serious acts of misconduct. Supervisors and managers must ensure each employee is aware of policy and procedures related to unauthorized commitments and conduct and discipline rules for unauthorized commitments in FAPM Letter 2635 and ER-4.1.

(4) *Ratification*. Although FAA's policy is to avoid unauthorized commitments, under certain approved circumstances such commitments may be ratified using the procedures in this section and converted into a legal contract.

(5) *Ratifying Official.* The ~~COCO Director of Acquisition and Contracting at Washington Headquarters~~ has authority to ratify unauthorized commitments. This ratifying authority cannot be delegated below this position.

(6) *Local Implementation.* All FAA organizations must follow the procedures in this section. Contracting offices and other organizations may issue additional implementing procedures if they do not contradict the procedures in this section.

b. *Procedures for Ratification.* When an organization discovers an unauthorized commitment, the organization must take immediate action to ratify the commitment and have the cognizant procurement office convert it to a legal transaction. Procedures for ratification are:

(1) The supervisor/manager, assisted by the person who committed the unauthorized act, prepares a memorandum of facts containing the following information:

- (a) A detailed description of the circumstances that caused the unauthorized commitment;
- (b) Reasons why normal procurement procedures were not followed;
- (c) A description of the bona fide Government need that required the commitment;
- (d) A statement about the benefit to FAA from acquiring the unauthorized supplies or services received;
- (e) The dollar value of the commitment;
- (f) Rationale for the contractor selected and identification of other sources considered;
- (g) The name of the individual who made the unauthorized act;
- (h) A statement about the disciplinary action taken to preclude the situation from recurring;
- (i) A specific recommendation that the transaction be approved and ratified;
- (j) A determination that funds are now available and were available at the time the unauthorized commitment was made; and
- (k) Any other pertinent facts including invoices, receiving reports, or other evidence concerning the transaction.

(2) Evidence of available funding should be attached to the memorandum.

(3) The memorandum of facts ~~must be~~ is signed by the employee who made the unauthorized commitment, and endorsed by the supervisor/manager. By signing the memorandum, the employee attests that the information is accurate and complete. If the employee has separated

from the FAA, then the organization having access to information about the unauthorized commitment prepares the memorandum and the former employee's supervisor/manager signs it.

(4) Legal review and concurrence is obtained before submitting the memorandum to the ratifying official.

(5) After legal concurrence, the memorandum along with the applicable ~~p~~Procurement ~~R~~Request (PR) is transmitted to the cognizant procurement office for ratification action.

(6) When the procurement office receives a PR and a properly documented supporting memorandum, the CO makes a written determination, as described below, and forwards the ratification action to the ratifying official.

(a) *CO Determination.* Before recommending approval of a ratification and as a part of the CO's review and determination, the CO:

(i) Determines the price to be fair and reasonable;

(ii) Recommends that payment be made;

(iii) Determines that the settlement of the unauthorized commitment would not involve a contract dispute subject to AMS Policy 3.9; and

(iv) Determines that the purchase would have been authorized had the purchaser followed established procedures.

(b) If an affirmative determination can be made in all areas of subparagraph (a) above, the CO prepares a memorandum to the ratifying official with the following information:

(i) A brief description of the unauthorized commitment;

(ii) A statement that prices are fair and reasonable;

(iii) A statement recommending approval of the unauthorized commitment;

and

(iv) A copy of all supporting documentation.

(c) If the CO, after legal concurrence, is unable to make an affirmative determination in all areas of subparagraph (a) above, the memorandum to the ratifying official states the CO's reasons that an affirmative determination cannot be made, recommends that the action not be ratified, and offers an alternative solution to resolving the unauthorized commitment.

c. Notice of Infractions.

(1) An unauthorized commitment made by an individual is considered a first infraction.

(2) Upon receipt of a request for ratification from an organization, the cognizant division manager of the contracting office forwards a notice of infraction to the next level manager/supervisor above the supervisor/manager who signed the memorandum of facts. The notice advises the second level manager/supervisor that the action violates Federal law and FAA policy and guidance; reminds him or her of the proper procurement process; offers to provide written material or mini-training sessions (when possible) to orient the organization to the procurement process; requests every effort be made to avoid future violations; and, when appropriate, requests the widest possible distribution of the notice within the organization.

d. Disciplinary Actions for Making Unauthorized Commitments.

(1) Individuals who make unauthorized commitments, and their immediate supervisor are subject to possible disciplinary actions. The recommended levels of disciplinary penalties for staff, managers, and supervisors are contained FAPM Letter 2635 and ER-4.1.

(2) Any unauthorized commitment made by a non-manager/supervisor with the approval of his or her manager/supervisor is an infraction against the manager/supervisor and not the non-manager/supervisor.

(3) The period of accumulation for the above-mentioned infractions by staff, managers, and/or supervisors is five (5) years.

e. Avoiding Ratification.

(1) When individuals who have not been delegated procurement authority need products or services, or when individuals with delegated procurement authority need products or services estimated to exceed their delegated authority, they must consult with the procurement office for support and guidance to avoid unauthorized commitments.

(2) An unauthorized commitment occurs when someone, other than a CO or other authorized individual, enters into an agreement on behalf of the Government but does not have authority to do so or to obligate the Government.

(3) To avoid a ratification action, an office requiring products or services must ensure that its employees are familiar with the procurement process and are aware of the consequences of unauthorized commitments.

(4) Individuals who have not been delegated procurement authority and who need supplies or services must contact either the person within their organization who has delegated procurement authority or the cognizant procurement office for assistance. The following are examples of types of procurement and areas of the procurement process that may involve individuals outside of the procurement offices, and circumstances in which procurement authority may be delegated to

individuals other than a CO. (For more information about procurement methods generally used by individuals outside of the procurement office, see AMS Procurement Guidance T3.2.2.5, Commercial and Simplified Purchase Method.)

(a) *Government Purchase Card*. FAA employees may be delegated authority to procure supplies and services using the Government purchase card.

(b) *Blanket Purchase Agreement (BPA)*. A procurement vehicle, awarded by a CO, for ordering supplies or services that may authorize other specific individuals to order supplies or services from the vendor.

(c) *Purchase Card Check*. FAA employees delegated purchase authority may use purchase card checks when a vendor does not accept the Government purchase card for on-the-spot, over-the-counter purchases of supplies and services.

(5) *Existing Contracts*. Contracting Officer Representatives, resident engineers, etc., must be careful not to direct a contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless such action is authorized by the CO. It is easy through conversation and during the normal daily interaction with the contractor to inadvertently direct the contractor to perform tasks that result in cost or schedule impact. If such direction is given without the delegated authority, or the express authorization of the CO, the result is an unauthorized commitment.

(6) *Contract Renewals*. Contracts awarded for a base period of performance plus options means that the Government is only committed for the base period. Each option period requires a contract modification before the beginning of the option period to authorize continued performance. Performance following the initial contract period must not begin until the contract has been properly modified to authorize continued performance. The requiring office is responsible for requesting a contract modification to exercise options and for providing the funds to continue performance. Individuals who serve as the Government's point of contact on a contract with option provisions should be familiar with the contract terms. Placing an order or directing tasks against an expired contract results in an unauthorized commitment. Before the beginning of the option year, if a modification has not been received to extend the contract period, the CO should be contacted for guidance before placing any orders or directing any tasks for that option period.

(7) *Examples*. The following are examples of areas where unauthorized commitments are commonly made:

(a) *Acquiring Conference Space*. After the request for conference space has been coordinated through the local real property office, the requiring office may discuss the requirement with the vendor/hotel to ensure the appropriate accommodations are available. However, the space should not be utilized until the transaction has been approved and an agreement signed by a person with the appropriate procurement authority.

(b) *Training*. Request for training should be submitted to the procurement office in time to enable the requirement to be processed sufficiently in advance of the beginning of the course.

(c) *Professional Speakers or Arbitration Services*. The requiring organization may identify the appropriate speakers or arbitrators and have discussions to ensure the Government's needs will be met. However, the requiring office should not enter into any oral or written agreements on behalf of the Government unless the person making the agreement has the delegated authority to do so. If the requiring office does not have an individual with the

delegated authority to enter into an agreement, the request should be submitted to the contracting office for processing.

f. *Exceptions to Infractions.*

(1) In cases of extreme emergencies, such as floods, fires, tornadoes, earthquakes and hurricanes, or emergencies that may have an immediate impact on the safety of the flying public, an individual may need to obligate the Government's funds to preserve life and property. In these instances, if possible, the individual should contact the cognizant procurement office and request that a CO verbally authorize the contractor to proceed according to emergency procedures outlined in AMS policy 3.2.2.4.1.1.

(2) When the conditions outlined above occur, and the CO was not contacted to give a verbal authorization, the memorandum of fact documents the circumstances. The memorandum includes a statement that the person who made the unauthorized commitment is exempt from the requirement for disciplinary action.

g. *Waiving Disciplinary Action.* The ratifying official may waive disciplinary action. The ratifying official must justify in writing why the unauthorized act does not warrant discipline.

h. *Definitions.*

(1) "Ratification" is an act of approving an unauthorized commitment by an official who has the authority to do so.

(2) "Unauthorized commitment" is an agreement entered into by a representative of the Government who does not have the authority to enter into agreements on behalf of the Government.

B Clauses Revised 7/2010

[view contract clauses](#)

C Forms Revised 7/2010

[view procurement forms](#)

D Appendix ~~Added 1/2011~~ Revised 9/2020

1 1102 Series Warrant Standards Revised 1/2017

	Threshold Limit	Minimum FAA Certification Level
\$150,000		Level I
	\$1,000,000	Level II
\$5,000,000		Level II
	\$10,000,000	Level II
	\$50,000,000	Level III
Unlimited		Level III

2 1170 Series Warrant Standards Added 09/2020

	<u>Threshold Limit</u>	<u>Minimum FAA Certification Level</u>
\$150,000		Level I
	\$250,000	Level I
\$300,000		Level II
	\$1,000,000	Level II
	\$1,500,000	Level III
Unlimited		Level III

Sections Revised:

3.1.5 A 1 – Requirement for an Agreement Regarding Conflict-of-Interest

3.1.5 A 3 – Single-Source/Non-Competitive Acquisitions

Procurement Guidance - (~~4/2020~~ 9/2020)

T3.1.5 Conflict of Interest Revised 8/2009

A Conflict of Interest

1 Requirement for an Agreement Regarding Conflict-of-Interest Revised ~~1/2017~~ 9/2020

2 Processing a Conflict of Interest Revised 1/2007

3 Single-Source/Non-Competitive Acquisitions Revised ~~1/2017~~ 9/2020

B Clauses

C Forms Revised 1/2011

T3.1.5 Conflict of Interest Revised 8/2009

A Conflict of Interest

1 Requirement for an Agreement Regarding Conflict-of-Interest Revised ~~1/2017~~ 9/2020

a. Persons who have a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions. A procurement team member (program officials, contracting personnel, legal counsel, and others supporting a program), Office of Dispute Resolution for Acquisition (ODRA) member, or other Federal member who has a real or apparent conflict of interest, and who is a Federal employee, must withdraw from participation in the source selection process if law (18 U.S.C. § 208) or regulation (5 CFR Part 2635) requires it. Considerations of equity and integrity of the procurement process require that non-Government members of a procurement team be held to the same standards.

b. Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5 CFR § 2635.502, or the procurement team member represents a party, if a reasonable person with knowledge of the relevant facts would question the procurement team member's impartiality in the matter. The law does not require non-Government procurement team members be removed when they have an apparent conflict, but the FAA's public image, workforce morale, and considerations of equity dictate that they be treated exactly as our own employees are treated.

c. Each person involved in the source selection process, including the ~~s~~Source ~~s~~Selection ~~e~~Official (SSO), contracting officer, and legal counsel, who might have access to confidential or proprietary procurement information such as procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit an Agreement Regarding Conflict-of-Interest (see AMS Procurement Forms) to the SSO or designee before any participation in the source selection process for all procurements with an estimated value of \$150,000 or greater. This is to ensure that no conflict of interest exists. An Agreement Regarding Conflict-of-Interest should be completed before distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of interest. The Agreement Regarding Conflict-of-Interest must be completed by individual procurement team members for each procurement and retained in the pre-award file.

2 Processing a Conflict of Interest Revised 1/2007

If the SSO or designee becomes aware of a conflict of interest, the SSO should notify the procurement legal counsel immediately. Action should be taken to remove the party from further participation in the source selection activities until the conflict of interest is reviewed and legal advice obtained. A procurement team member must be excused or removed from participation in the source selection process should a conflict of interest exist, unless a waiver is granted. All conflict of interest cases must be clearly documented. The procurement team members must update and resubmit any and all conflict

of interest statements if an individual's financial, business, or employment relationship changes to the extent that a conflict of interest could exist.

3 Single-Source/Non-Competitive Acquisitions Revised 1/2017 9/2020

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the Contracting Officer will take all appropriate actions in coordination with the ~~Program Office~~Service Organization. The Agreement Regarding Conflict-of-Interest form will be incorporated into the Single Source Justification. Any person involved in the source selection process who is not a signatory on the Single Source Justification will complete a separate Agreement Regarding Conflict-of-Interest Form. The Contracting Officer may tailor the Agreement Regarding Conflict of Interest Form as appropriate.

B Clauses

[view contract clauses](#)

C Forms Revised 1/2011

[view procurement forms](#)

Sections Revised:

3.1.7 A 1 – Responsibilities Related to Organizational Conflict of Interest

3.1.7 A 2 – Identification of Potential OCI Situations

Procurement Guidance - (~~4/2020~~ 9/2020)

T3.1.7 Organizational Conflict of Interest Revised 4/2006

A Organizational Conflict of Interest

1 Responsibilities Related to Organizational Conflict of Interest Revised 9/2020

2 Identification of Potential OCI Situations Revised ~~10/2019~~ 9/2020

3 Disclosure by Offerors or Contractors Participating in FAA Acquisitions

4 Remedies for Nondisclosure

5 Contractor Participation in Preparing Specifications or Statements of Work

6 Procedures

7 SIR Provisions

B Clauses

C Forms

T3.1.7 Organizational Conflict of Interest Revised 4/2006

A Organizational Conflict of Interest

1 Responsibilities Related to Organizational Conflict of Interest Revised 9/2020

a. The policy of the FAA is to avoid contracting with contractors who have unacceptable organizational conflicts of interest. An organizational conflict of interest means that because of existing or planned activities, (1) an offeror or contractor is unable or potentially unable to render impartial assistance to the agency, or (2) has an unfair competitive advantage, or (3) the offeror or contractor's objectivity is or might be impaired. It is not the intention of the FAA to foreclose a vendor from a competitive acquisition due to a perceived Organizational Conflict of Interest (OCI). FAA Contracting Officers are fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances. The final determination of such action may be negotiated between the impaired vendor and the Contracting Officer (CO). The ~~Contracting Officer's~~CO's business judgment and sound discretion in identifying, negotiating, and eliminating OCI scenarios should not adversely affect the FAA's policy for competition. The FAA is committed to working with potential vendors to eliminate or mitigate actual and perceived OCI situations, without detriment to the integrity of the competitive process, the mission of the FAA, or the legitimate business interests of the vendor community. Contractors should be instructed to contact the FAA at the earliest possible time after an investment decision has been made for a particular acquisition to evaluate whether any identified actual or potential conflicts of interest may be avoided or mitigated. As used herein, the term "person" includes any legal entity including a partnership, corporation, or association.

b. Mitigation Plans. The FAA reserves the right to audit any or all proposed mitigation plans, and to reject a plan, if in the opinion of the ~~Contracting Officer~~CO such a plan is not in the best interests of the FAA.

2 Identification of Potential OCI Situations Revised ~~10/2019~~ 9/2020

a. Contracting Officers should analyze planned acquisitions in order to:

(1) Identify and evaluate potential OCI's as early as possible in the acquisition process and where possible prior to issuance of an initial ~~s~~Screening ~~i~~Information ~~r~~Requ~~e~~St (SIR); and

(2) Avoid, neutralize, or mitigate potential conflicts before award of any contract, grant, cooperative agreement, or other transaction agreement.

b. *Examples of Conflict Situations.* The following examples illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the Contracting Officer apply general guidance to individual contract situations:

(1) *Unequal Access to Information.* Access to "nonpublic information" as part of the performance of an FAA contract, grant, cooperative agreement, or other transaction

agreement that could provide the contractor a competitive advantage in a later competition for another FAA contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information. If the requirements of the FAA procurement anticipate the successful vendor may have access to nonpublic information, all vendors should be required to submit and negotiate an acceptable mitigation plan.

(2) *Biased Ground Rules.* A contractor in the course of performance of an FAA contract, grant, cooperative agreement, or other transaction agreement, has in some fashion established important "ground rules" for another FAA acquisition, where the same contractor may be a competitor. For example, a contractor may have drafted the statement of work, specifications, or evaluation criteria of a future FAA procurement. The primary concern of the FAA in this case is that a contractor so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the FAA procurement anticipate that a contractor may have been in a position to establish important ground rules, including but not limited to those described herein, the contractor should be required to submit and negotiate an acceptable mitigation plan.

(3) *Impaired Objectivity.* A contractor in the course of performance of a FAA contract, grant, cooperative agreement, or other transaction agreement, is placed in a situation of providing assessment and evaluation findings over itself, or another business division or a subsidiary of the same corporation, or another entity with which it has a significant financial relationship. The concern in this case is that the contractor's ability to render impartial advice to the FAA could appear to be undermined by the contractor's financial or other business relationship to the entity whose work product is being assessed or evaluated. In these situations, where a "walling off" of lines of communication may well be insufficient to remove the perception that the objectivity of the contractor has been tainted. If the requirements of the FAA procurement indicate that the successful vendor may be in a position to provide evaluations and assessments of itself or corporate siblings, or other entity with which it has a significant financial relationship, the affected contractor should provide a mitigation plan that includes recusal by the vendor from the affected contract work. Such recusal might include divestiture of the work to a third party vendor.

c. Contracting Officers should obtain the advice of legal counsel and appropriate technical specialists in evaluating potential conflicts and in developing any necessary SIR provisions and contract clauses. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the planned contract. The exercise of sound business judgement and discretion is required in both the decision on whether a significant potential conflict exists and the development of an appropriate mitigation plan. Before issuing a SIR for a contract that may involve a potential conflict, the Contracting Officer should formulate, in conjunction with legal counsel and team members, a course of action for resolving the conflict. The rational basis supporting the Contracting Officer's decision on an OCI issue should be documented in the contract file.

3 Disclosure by Offerors or Contractors Participating in FAA Acquisitions

- a. Offerors or contractors should provide information which concisely describes all relevant facts concerning any past, present or currently planned interest, (financial, contractual, organizational, or otherwise) relating to the work to be performed and bearing on whether the offeror or contractor has a possible OCI.
- b. If the offeror or contractor does not disclose any relevant facts concerning an OCI, the offeror or contractor, by submitting an offer or signing the contract, warrants that to its best knowledge and belief no such facts exist relevant to a possible OCI.

4 Remedies for Nondisclosure

The following are possible remedies should an offeror or contractor refuse to disclose, or misrepresent, any information regarding a potential OCI:

- a. Refusal to provide adequate information may result in disqualification for award.
- b. Nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award.
- c. Termination of the contract, if the nondisclosure or misrepresentation is discovered after award.
- d. Disqualification from subsequent FAA contracts.
- e. Other remedial action as may be permitted or provided by law or in the resulting contract.

5 Contractor Participation in Preparing Specifications or Statements of Work

The Contracting Officer should consider the following when contractor support is used to prepare specifications or statements of work:

- a. If a contractor prepares and furnishes complete specifications covering non-developmental items, to be used in a competitive acquisition, that contractor may have a conflict in furnishing these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. Therefore, a contractor who has prepared and furnished completed specifications for such items should be excluded from competition for that acquisition. However, an OCI may not exist in the following circumstances:

- (1) Contractors furnish, at Government request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(2) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

b. If a single contractor drafts complete specifications for non-developmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the FAA may be assured of getting unbiased advice as to the content of the specifications and may avoid allegations of favoritism in the award of production contracts.

c. There may be instances when contractor assistance is necessary in preparing statements of work. When contractor support is used, the contractor might be in a position to favor its own products or capabilities. If a contractor prepares, or assists in preparing, a statement of work to be used in competitively acquiring a system or services, or provides material leading directly and without delay to such a statement of work, that contractor may not supply the system, major components of the system, or the services unless:

(1) It is the single source; or

(2) It has participated in the development and design work; or

(3) More than one contractor has been involved in preparing the work statement.

d. In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair, therefore no OCI mitigation would be necessary.

6 Procedures

a. The Contracting Officer should award the contract to the apparent successful offeror unless a conflict of interest is determined to exist which cannot be neutralized, avoided, or mitigated. Before determining to withhold award based on conflict of interest considerations, the Contracting Officer should notify the contractor, provide the applicable reasons, and allow the contractor a reasonable opportunity to respond. If after consultation with legal counsel and team members, the Contracting Officer determines that it is in the best interest of the FAA to award the contract notwithstanding a conflict of interest, the Contracting Officer should document that determination.

b. When investigating a suspected OCI concerning a prospective contractor (in instances when a contractor has not independently submitted any information), the Contracting Officers should first

seek the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

c. If the Contracting Officer decides that a particular acquisition involves a potential OCI, the Contracting Officer should, before issuing the SIR:

- (1) Prepare a written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict; and
- (2) If appropriate, a draft SIR provision and/or contract clause.

d. The Contracting Officer should also consider additional information provided by prospective contractors in response to the SIR or during negotiations and attempt to avoid, neutralize, or mitigate the OCI before contract award.

e. The Contracting Officer should retain all organizational conflict of interest information in the contract file.

f. If, during the effective period of any restriction, a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, and send a copy of the contract under which the restriction was imposed.

7 SIR Provisions

The following should be considered in developing SIRs where potential conflicts of interest may be evident. As a general rule, potential organizational conflicts of interest may be resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected SIRs should contain a provision that:

- a. Invites offerors' attention to this concern;
- b. States the name of the potential conflict as seen by the Contracting Officer;
- c. States the nature of the proposed restraint upon future contractor activities; and
- d. Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this information to the contract are subject to negotiation.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)